



September 17, 2015

By Mail, FOIA Online and Email (hq.foia@epa.gov)

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

Re: Freedom of Information Request for the Environmental Protection Agency's ("EPA")
White Paper on Winter Manure Application and Related Records

Dear Freedom of Information Officer:

Earthjustice, on behalf of itself and Riverkeeper, Inc., submits this request for records in accordance with the provisions of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552.

BACKGROUND

The records requested herein are related to the FOIA request submitted by Earthjustice on April 20, 2015, No. HQ-2015-006482 ("first FOIA request"), and documents received in response thereto. The first FOIA request related to a white paper referenced in a PowerPoint presentation given to the Cayuga County, New York Water Quality Management Agency on December 4, 2014. In response to the first FOIA request, Earthjustice received a PDF PowerPoint presentation titled "EPA/SERA 17 Paper on Winter Application of Manure" ("SERA 17 PowerPoint") that referenced a document titled "White Paper: Overview of Research Findings on Winter Application of Manure." On information and belief, the White Paper referenced in the SERA 17 PowerPoint presentation is the White Paper referenced in the PowerPoint presented in Cayuga County, New York. The SERA 17 PowerPoint states that EPA received feedback on the White Paper from the "EPA/SERA-17 Workgroup." In a subsequent call with EPA on September 2, 2015, EPA informed us that it had collaborated with SERA-17 members on the White Paper and that SERA-17 members had provided feedback and written comments on the draft.

FOIA REQUEST

In accordance with FOIA, please provide us with all of the following records:

- 1) Unredacted copies of all communications between EPA staff and members of SERA-17 regarding:
 - a. the White Paper referenced in the SERA-17 PowerPoint document; and/or
 - b. the SERA-17 PowerPoint presentation.
- 2) Unredacted copies of all versions of the White Paper that were shared with members of SERA-17 by EPA or TetraTech.
- 3) Unredacted copies of all comments received by EPA or TetraTech regarding the White Paper from members of SERA-17.
- 4) Unredacted copies of all confidentiality agreements or other service contracts executed between EPA and members of SERA-17.
- 5) Unredacted copies of any records (that were not already released) that were exchanged between EPA and members of the Pacific Northwest CAFO Workgroup regarding research findings on winter application of manure.
- 6) Records reflecting the membership of the Pacific Northwest CAFO workgroup and SERA-17.
- 7) Unredacted copies of all confidentiality agreements or other service contracts executed between EPA and members of the Pacific Northwest CAFO workgroup.
- 8) Unredacted copies of the text and/or PowerPoint slides of presentations made at EPA/SERA-17 meetings between Fall 2011 and Spring 2013 regarding winter application of manure.
- 9) Unredacted copies of all versions of the White Paper as they existed when sent to EPA by TetraTech.

The use of the word “unredacted” above means that we are seeking full disclosure of all information in the requested record. In the event that you determine that you can disclose only some of the information contained in a record that falls within the scope of this request, please provide us with a copy of the record with only the information that you have determined to be properly treated as confidential redacted.

If any information requested herein was, but is no longer, in EPA’s possession or subject to its control, state whether it is (a) missing or lost, (b) has been destroyed, (c) has been transferred voluntarily or involuntarily to others, or (d) otherwise disposed of, and in each instance, explain the circumstances surrounding and authorization for such disposition of it and state the date or approximate date of it.

If you claim that any of the foregoing information is exempt from mandatory disclosure, we respectfully request that you:

- 1) Provide an index of all documents containing the requested information, reflecting the date, author, addressee, number of pages, and subject matter of such documents;
- 2) State the exemption you deem to be applicable to each information request;
- 3) State with particularity the reason why such exemption is applicable to each information request;
- 4) Examine each information request to determine if reasonably segregable non-exempt information exists which may be released after redacting information deemed to be exempt; and
- 5) Exercise your discretion to release such records notwithstanding the availability of a basis for withholding.

FEE WAIVER REQUEST

Pursuant to 5 U.S.C. § 552, we request a fee waiver because “disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 40 C.F.R. § 2.107(l)(1). As demonstrated below, all of the four factors related to the first fee waiver requirement, as specified in EPA’s FOIA regulations at 40 C.F.R. § 2.107(l)(2)(i)-(iv), weigh in favor of granting our fee waiver request.

Factor 1: The Requested Records Concern the Operations or Activities of the Federal Government.

The subject matter of the requested records concerns “identifiable operations or activities of the Federal government,” 40 C.F.R. § 2.107(l)(2)(i), insofar as the requests relate to the EPA’s research and findings and/or recommendations as a federal agency regarding the relationship between winter application of farm manure and water pollution, an issue within its expertise and jurisdiction.

Factor 2: Disclosure of the Requested Records is Likely to Contribute to Public Understanding of Government Operations or Activities.

Disclosure of the requested records is “likely to contribute” to an “increased public understanding,” 40 C.F.R. § 2.107(l)(2)(ii), of government operations or activities because such disclosure will enable Requesters to understand what EPA has done or is doing in order to

address water quality issues related to the winter application of farm manure. This information is not already accessible through EPA's website. See Factor 4, below.

Factor 3: Disclosure of the Requested Records Will Contribute to the Understanding of a Broad Audience of Persons Interested in Whether, How and When the Government Will Release Findings, Regulations, or Recommendations Addressing the Winter Spreading of Farm Manure

Disclosure will "contribute to the understanding of a reasonably broad audience of persons interested in" learning about whether, how and when the Government intends to provide findings, recommendations, or regulations addressing the impacts of winter spreading of farm manure on water quality. Both Requesters were either counsel or petitioners in a recent challenge to the removal of regulatory environmental protections (including those governing the management of manure) for approximately 357 concentrated animal feeding operations ("CAFOs") in New York State, and both Requesters are in a position to analyze documents released pursuant to this FOIA request and to "contribute to the understanding of a reasonably broad audience of persons" regarding the subject matter of this FOIA request. Organization-specific information is set forth below.

Earthjustice is a national nonprofit environmental law firm which has made safeguarding the environment, including especially water and air resources vulnerable to contamination from CAFOs, one of its top priorities and has developed expertise in this area. Earthjustice has filed or intervened in several lawsuits involving pollution emitted from CAFOs. See, e.g., *Riverkeeper, Inc. v. Martens*, No. 4166-13 (filed Jul. 26, 2013, Sup. Ct. Albany Cty.) (appeal docketed Feb. 18, 2015) (challenging a change in New York State regulation that deregulated a class of dairy CAFOs); *Waterkeeper Alliance v. EPA*, No. 09-1017 (filed Jan. 15, 2009 D.C. Cir.) (representing petitioners in challenge to regulations exempting from reporting air releases of hazardous substances from animal waste at farms); *Rose Acre Farms, Inc. v. NC Department of Environment and Natural Resources*, No. 12-CVS-10 (Super. Ct. Hyde Cty. March 2, 2012) (representing intervenors on side of State agency defending decision to require egg CAFO to operated under NPDES permit).

In addition to being able to analyze the information provided to determine EPA's findings on the relationship between winter spreading of manure and water quality impacts and appropriate mitigation matters, Earthjustice has the "ability and intention to convey this information to the public." 40 C.F.R. § 2.107(l)(2)(iii). Earthjustice can publicize information received from this request, as well as its analysis of EPA's findings and recommendations, by means of, for example, public comments it may submit to state regulators urging regulation of winter spreading of manure in accord with the recommendations in the EPA white paper sought pursuant to this FOIA request. Earthjustice can publicize its submission of public comments via

its monthly electronic newsletter, which serves approximately 223,000 subscribers. In addition, Earthjustice also can utilize its online action alert system to urge members of the public to contact policymakers and express their support for the comments Earthjustice submits to state regulators based on the EPA white paper. Typically, thousands of individuals respond to such alerts.

Riverkeeper is a member-supported watchdog organization dedicated to defending the Hudson River and its tributaries and protecting the drinking water supply of nine million New York City and Hudson Valley residents. For more than 44 years Riverkeeper has stopped polluters, championed public enjoyment of the Hudson River and its tributaries, and restored habitat, benefiting the natural and human communities of the Hudson River and its watershed.

Riverkeeper has made preventing nutrient pollution from agricultural operations a top priority, as a number of Hudson River tributaries have become impaired due to agricultural operations. As part of its campaign, Riverkeeper recently joined Earthjustice in filing a lawsuit challenging New York's deregulation of certain dairy CAFOs. *Riverkeeper, Inc. v. Martens*, No. 4166-13 (filed Jul. 26, 2013, Sup. Ct. Albany Cty.) (appeal docketed Feb. 18, 2015). Riverkeeper shares Earthjustice's intent to publicize information garnered from this request. Riverkeeper will draw on its institutional expertise to interpret EPA's findings on water quality impacts resulting from winter manure application, and it can marshal public action on these matters via its website, blog postings, social media postings, weekly electronic mailings to roughly 3,880 members, and earned media coverage in newspaper, radio and television. Riverkeeper also participates in panel discussions, debates, film screenings, conferences, presentations, hearings, rallies and other outreach events, at which information on winter manure spreading issues can be distributed.

In sum, because of Requesters' expertise in this area, they are well-prepared to analyze and evaluate the records received pursuant to this request and to disseminate their findings to a broad audience.

Factor 4: The Contribution to Public Understanding of Government Operations or Activities Will Be Significant.

The public's understanding of government operations or activities by EPA to advance scientific understanding and appropriate policy to address the water quality impacts of winter spreading of manure, "as compared to the level of public understanding existing prior to disclosure, [will] be enhanced by the disclosure to a significant extent." 40 C.F.R. § 2.107(l)(2)(iv). Because so little is publicly known or understood about EPA's findings on this issue, public understanding of these efforts will undoubtedly be enhanced to a significant extent by disclosures in response to this request.

In addition, the second fee waiver requirement – that the request “is not primarily in the commercial interest of the requester,” 40 C.F.R. § 2.107(l)(1) – is also met here. The Requesters are both 501(c)(3) nonprofit organizations and do not have any “commercial interest that would be furthered by the requested disclosure” of information. 40 C.F.R. § 2.107(l)(3)(i). Indeed, Requesters’ sole interest in obtaining the requested information is to broaden public understanding of what EPA is doing to adequately understand and address the relationship between winter manure spreading and water quality.

In sum, this request meets the requirements for a fee waiver. In the event that fees are not waived, please notify and inform us of the basis for your decision.

INSTRUCTIONS FOR RECORD DELIVERY

To the extent that the requested records are available in a readily accessible electronic format, we would prefer to receive the documents electronically, either by email or on a CD. If electronic copies are unavailable, we will accept paper copies. Please send records to Eve Gartner at egartner@earthjustice.org, or mail them to:

Eve Gartner
Earthjustice
48 Wall Street, 19th Floor
New York, NY 10005

As FOIA requires, we expect your response within twenty working days of your receipt of this request. In the event that you have any questions concerning the type of materials we are interested in receiving, please contact me by email or by telephone at (212) 845-7381.

Thank you for your assistance in this matter.

Sincerely,


Eve C. Gartner